BEFORE THE ELECTION TRIBUNAL, TRIVANDRUM.

In the matter of the Election to the House of the People from the Parliamentary Constituency of NAGERCOIL, held in January 1952.

Election Petition No. 40 of 1952

26th December 1952.

Present:—

Shri G. Kumara Pillai, M. A., B. L. *(Chairman)*
Shri A. H. Bijili, B. Sc., B. L. *(Member)*
Shri R. Narayana Pillai, B. A., B. L. *(Member)* ....

Petitioner:—

Sivathanu Pillai son of Mathevan Pillai, Ramavarmapuram Ward No. XIII, Nagercoil, Travancore—Cochin.

By Advocate Shri K. P. Ramachandran Nair.

Versus

Respondents:—

1. A. Nesamony, Advocate, Nagercoil. *By Advocate Shri D. Gnanasigamony.*
2. Sam Nathaniel, Advocate, Nagercoil.
3. P. Thanulinga Nadar, Advocate, Nagercoil.

The petition having been finally heard on 20-12-1952 the Tribunal on 26-12-1952 made and announced the following:—

ORDER

1. This petition is filed by Shri Sivathanu Pillai son of Mathevan Pillai, one of the unsuccessful candidate at the election held in January 1952 to the House of the People from the Parliamentary constituency of Nagercoil, for declaring the election of the returned candidate, the 1st respondent, Shri A. Nesamony, *void*. Respondents 2 and 3 are the other unsuccessful candidates at the said election. The petitioner impeaches the election on grounds of irregularities in procedure, fraud, corrupt and illegal practices, false, incorrect and incomplete return of election expenses, etc.,set forth in paragraphs 2, 3 and 7 to 12 of the petition and lists A to D attached thereto. The 1st Respondent denies the charges. In his objection petition he answered the charges seriatim and also contended that the allegations in the election petition were vague, frivolous, and vexatious, and lacking in bonafides, and that the petition did not contain the particulars required by law and should, therefore, be struck off as untenable. He also filed a separate petition for striking off the election petition *in limine* as it discloses no ground for setting aside the election and does not contain the particulars required by law.

2. After hearing both sides at great length we struck out, on 4-10-1952, such allegations in the election petition as we considered could not be enquired into and framed the following issues on the remaining allegations:—

ISSUES

i. Whether the acceptance of the nominations of Respondents 1 and 3 was improper for the reasons alleged in paragraph 7 of the Election Petition? Whether the result of the election was materially affected by their improper acceptance?

ii. Whether the 1st Respondent made a speech at a public meeting near the Monday Market, Neyyoor, on 31-12-1951 stating that the petitioner had misappropriated properties of considerable value belonging to the Sambavar community in the Thovala Taluk? Whether he repeated these allegations at another public meeting on the same day at Mulakummoodu near Thuckala? Whether these acts would constitute corrupt practice as defined in Clause 5 of Section 123 of the Representation of the People Act?

(iii) (a) Whether the persons mentioned in Clause 1 of List B of the Election Petition were the agents of the 1st Respondent, and whether they created a violent disturbance at the public meeting held at Karungal on the 12th November 1951 as alleged therein? Whether the said persons created a violent disturbance at the public meeting at Velliavilal on 10-12-1951 as alleged in Clause 2 of List B?

(b) Whether Fr. Hillari, Manager of the Carmel School, Nagercoil, was an agent of the 1st Respondent and exercised undue influence over the parents of his pupils to vote for the 1st Respondent and conducted fraudulent propaganda that the Bishop had ordered them to vote on risk of spiritual displeasure?

(c) Whether the Catholic Bishop of Kottar had issued written instructions to his Congregation prohibiting them from voting for Socialists and Communists and to the effect that they would be committing a sin if they voted in favour of candidates supported by these parties? Whether these instructions were read out to the congregation on the Sunday previous to the election? Whether the result of the election was materially affected thereby?

(d) Whether Dr. Mathias and S. Kumaraswami of the Pioneer Company, Nagercoil exercised undue influence over their employees to vote for the 1st Respondent on peril of their job? Whether Dr. Mathias and Kumaraswami gave one day's wages for their employees to vote for the 1st Respondent?

(e) Whether the 1st Respondent has exercised undue influence over the lessees of the Church of South India Mission and caused them to vote for him by threatening to deprive them of their leaseholds if they did not vote for him?

Did he create a general impression among them that he had discovered a way to find out if they did not vote for him?

(f) Whether the 1st Respondent has caused Dr. Mathias to purchase votes for him from the villages of Geneshapuram, Payode and Chemponvilai? Whether he has caused Dr. Mathias to pay a day's wages to the latter's estate employees to vote for him?

(g) Whether Sahul Hammeed and his son paid money as agents of the 1st Respondent to the voters at Akianicherry, and Chungankadacherry on 1-1-1952 to vote for him?

(h) Whether A. M. Simon paid money to the voters at Colachel and through his Father-in-law to the voters at Kadiayapattanam and Manakudi on 1-1-1952 to vote for the 1st respondent? Whether he hid so at the instance of the 1st respondent?

(i) Whether the 1st Respondent caused Dr. Mathias to lend money to D. Thomas and A. M. Simon for obtaining their support to his candidature?

(j) Whether the motor vehicles mentioned in Clause 8 of List D were hired or procured on payment or otherwise by the 1st respondent and his agent and other persons with his connivance for the conveyance of electors to and from the places mentioned therein?

(iv) Whether the instances covered by issues 3, 4 and 5 will amount to corrupt practices vitiating the 1st respondent's election?

(v) Whether the 1st respondent's return of election expenses is false, incorrect and incomplete? Whether the return is invalid for any of the reasons stated in Clauses (a), (b) and (c) of paragraph 12 of the election petition?

(vi) Whether the 1st respondent's election is liable to be declared void for all or any of the reasons covered by issues 1 to 5?

(vii) What is the order as to costs?

3. The reasons for striking out the allegations not covered by the above issues are stated in our order dated the 13th October 1952, annexed to this order.

4. After framing the issues on 4-10-1952 we posted the election petition to 13-10-1952 for examination of the petitioner. But the petitioner did not appear on 13-10-1952, and a petition signed by him was filed by his Advocate on that date, stating that he (petitioner) was not well and was not in a position to appear before the Tribunal on that day and that he had moved the Election Commission to transfer the trial to some other Tribunal as he had reasons to believe from the nature of issues raised and other circumstances that he would not get a fair trial. Thereupon we adjourned the trial to 22-10-1952

and ordered that the case would be proceeded with on 22-10-1952 if the petitioner did not obtain from the Election Commission orders by that date staying or transferring the proceedings. We also directed on 13-10-1952 that if the petitioner did not obtain such orders by 22-10-1952 he must produce his documents and lists of witnesses and would also be examined on 22-10-1952. The petitioner did not appear on 22-10-1952. No order was also obtained from the Election Commission staying or transferring the proceedings. Nor did the petitioner produced his documents and list of witnesses on that date. But an application was made on his behalf on 22-10-1952 for time to move the High Court under Articles 226, 227 and 238 of the Constitution of India to quash the order striking out the allegations not covered by the issues raised for trial. Although the 1st Respondent strongly opposed this application we adjourned the trial to 25-10-1952, with the direction that the petitioner must appear and examine himself or adduce other evidence on that day and that the case would be proceeded with if he defaulted to do so. This order too was not complied with by the petitioner. On 25-10-1952 his Advocate filed a petition stating that a Writ Petition, O. P. 95 of 1952, had been filed in the High Court of Travancore-Cochin for quashing the order striking out the allegations and praying that the trial should be held up till the disposal of the above O. P. or adjourned for at least a month. We then adjourned the trial to 8-11-1952. On the petitioner's application the trial was again adjourned from 8-11-1952 to 15-11-1952. Neither party appeared, and no witness was present, on 15-11-1952. The Advocates also did not appear on that date; and there was also no application for adjournment by any party. So we adjourned the Election Petition to 22-11-1952 for hearing. On 22-11-1952 also the petitioner and his Counsel did not appear, and we adjourned the case to 29-11-1952 for hearing. Even on 29-11-1952 the petitioner and his Counsel did not appear. We, however, adjourned the case once again to 20-12-1952. The High Court dismissed the Writ Petition, O. P. 95 of 1952, on 11-12-1952. But the petitioner and his Counsel neither appeared nor applied for time on 20-12-1952 also.

5. In the light of the repeated defaults of the petitioner and his Counsel we considered that no useful purpose would be served by further adjourning the hearing. We therefore heard on 20-12-1952 the 1st respondent's Advocate who had been pressing all along for the disposal of the petition and submitting that the petitioner was only trying to protract the proceedings and harass the 1st respondent, and posted the case to this date for disposal. The petitioner has not cared to examine himself and his witnesses in spite of ample time given to him for that purpose. He has not even filed a list of witnesses; and he has also not been appearing on any of the posting dates after 4-10-1952. From 8-11-1952 his Counsel also has not been appearing.

6. The burden of proof as regards all the issues is on the petitioner. Since he has not adduced any evidence we hold that the petitioner has not made out any ground for declaring the election of the 1st respondent void. We further find that no corrupt or illegal practice has been proved to have been committed by, or with the connivance of any of, the respondents or their agents. It has not also been proved that the 1st respondent's return of election expenses is false, incorrect or incomplete, or invalid for any of the reasons stated in paragraph 12 of the election petition. Since the petition fails the petitioner must pay the costs of the 1st respondent and bear his own costs. We assess the 1st respondent's costs, inclusive of Advocate's fees, as Rupee Three hundred (Rs. 300|-).

7. In the result, we dismiss the election petition with costs to the 1st respondent as aforesaid.

(Sd.) G. Kumara Pillai, *Chairman.*
do. A. H. Bijili, *Member,*
do. R. Narayana Pillai, do.

ANNEXURE.

PROCEEDINGS OF THE ELECTION TRIBUNAL, TRIVANDRUM ON ELECTION PETITION No. 40|1952.

ORDER.

1. One of the unsuccessful candidates at the election held in January 1952 to the House of the People from the Parliamentary Constituency of Nagercoil, Sri Sivathanu Pillai son of Mathevan Pillai, has filed this petition for declaring the election of the returned candidate, the 1st Respondent, Sri A. Nesamony, to be void. He impeaches the election on several grounds set forth in paragraphs 2, 3, and 7 to 12 of the petition and lists A to D attached thereto. The 1st Respondent contends that all these grounds are only vague and general charges which do not deserve consideration and cannot be enquired into. Along with the objection petition in which he has answered the charges seriatim and stated that the petition is vague, frivolous and vexatious and lacking in bonafides and does not contain the particulars required by law and ought to be struck off as untenable, he has also filed another petition praying that the Election Petition might be struck off *in limine* as it discloses no ground for setting aside the election and does not contain the particulars of the alleged corrupt practices as required by law. We therefore heard both the 1st Respondent and the petitioner's Counsel on the preliminary question as to whether the election petition in its entirety, or any part of it, should be struck off, and as to what issues have to be framed

and set down for trial if the petition cannot be struck off in its entirety. After we heard the parties at length for two days, the petitioner filed three petitions on 4-10-1952, one for amending the Election Petition, another asking us to order him to furnish further particulars if we deem them necessary and stating that he will be damnified if the allegations are struck off on the ground of want of particulars and that he is ready and willing to furnish the further particulars within a reasonable time if the Tribunal is of opinion that such particulars are required, and the third for accepting the pamphlets and other printed papers referred to in the lists. After hearing the petitioner and the 1st Respondent on these petitions also we came to the conclusion that the Election Petition could not be struck off in its entirety and that issues had to be raised and set down for trial in regard to some of the allegations and charges contained therein. We also came to the conclusion that even after taking into consideration the three petitions filed by the petitioner on 4-10-1952, no issue could be raised on the other allegations and charges made in the Election Petition, and that those allegations and charges should be struck off. We accordingly framed seven issues for trial on 4-10-1952 and struck off the allegations and charges in the Election Petition not covered by those issues. We are now giving the reasons for our decision to strike off the allegations.

2. Clause 1 of Section 83 of the Representation of the People Act provides that an Election Petition shall contain a concise statement of the material facts on which the petitioner relies, and Clause 2 provides that the petition shall be accompanied by a list setting forth full particulars of any corrupt or illegal practices which the petitioner alleges, including as full a statement as possible as to the name of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each practice. Both the petition and the list have to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. Power is given to the Tribunal by Clause 3 of Section 83 to allow the particulars included in the list to be amended or to order further and better particulars to be furnished upon such terms as to costs and otherwise as it may direct. There is no other provision in the Representation of the People Act conferring on the Tribunal the power of allowing amendments. From the Act it, therefore, appears that the Tribunal can allow only the particulars in the list to be amended and has no power to allow an amendment of the petition itself. The uniform practice also of Election Tribunals in India appears to have been to refuse amendments of Election Petitions and to allow only the particulars in the list to be amended. In the case of KANGRA CUM GURDAZPUR (M. R.) 1924 reported in HAMMOND'S ELECTION CASES—India and Burma, 1936 Edition, page 435, which was governed by Election Rules similar to Clauses 1, 2 and 3 of Section 83

of the Representation of the People Act, the Commissioners observed at page 440:—"What we have to see is whether we can allow the petitioner to amend his petition and list of particulars at this stage or not. We consider that Rule 33 (3) gives us power to call for further and better particulars if we so desire. This power, however, refers only to the particulars, and not to the petition. The present Rule 33 (1), (2) and (3) is different from the old Rule 31." Exactly the same view was adopted by the Commissioners who decided the case of AMRITSAR CITY (M) 1924 reported in HAMMOND'S ELECTION CASES Page 83. The Commissioners in that case further pointed out that there is difference between English and Indian Law in this matter. The contention that the Election Tribunal can allow the petition to be amended since the petition has to be tried, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits, has also not been countenanced in other cases. In the case of KANGRA CUM GURDAZPUR mentioned above as well as in the case of SAHARANPUR (N.—M. R.) 1920 reported in HAMMOND'S ELECTION CASES page 621 this contention was over-ruled on the ground that the direction to enquire into the petition in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits referred only to the conduct of the enquiry and not to the petition itself. The amendments which the petitioner in the present case wants to make are nine in number. The most important of them are what are referred to as amendments 5, 6 and 7 in the Amendment Petition. In paragraph 7 of the Election Petition the petitioner impeached the acceptance of the nominations of Respondents 1 and 3 on the ground that, "There was no declaration by them of their election agents as per Rules." The 1st Respondent contends that as the Election Petition stands at present it will be open to the petitioner to show only that there was no declaration by Respondents 1 and 3 of their election agents as per the rules framed under the provisions of the Representation Act, and that if the amendment is allowed it will be open to him to show that there was no declaration both as per the rules and as per some of the Sections of the Act. The petitioner urges that even as the petition stands at present it will be open to him to show that there was no declaration as per the Sections also of the Act, and that the petition does not limit his objections to the violation of the rules alone. If that is so, he need not have asked for the amendment at all. We do not think it proper to express any opinion at this stage as to what the petitioner may or may not prove on the strength of the allegation made in paragraph 7 of the Election Petition. But we have no doubt that the amendment sought to be made in this paragraph is an amendment of the petition itself. It is not an amendment of the particulars to be stated in the list accompanying the petition. As regards the nature of the amendments that can be made to the particulars in the list we adopt

entirely the opinion of the Commissioners in AMRITSAR CITY (M) 1924, who say, "According to clause (2) of this rule, the petitioner is required to give full particulars of the alleged corrupt practices in this list. Clause (3) of the rule defines the scope of the amendment of this list, which can be permitted. Clause (3) lays down that the Commissioner may allow the particulars *included in the said list* to be amended or order such further and better particulars in regard to *any matter referred to therein* to be furnished as may in their opinion be necessary for the purposes of ensuring a fair and effectual trial. Now, as already stated above, petitioner has referred to only one instance of personation in paragraph (1) of the list, and by the proposed amendment he seeks to introduce several other instances into the list. We consider that this clearly goes beyond the scope of Clause (3) of rule 33. Petitioner can be allowed or required to give further details with regard to the instance referred to in the original list, but we do not think it is open to him to introduce fresh instances. It would be, in our opinion, straining the language of the rule to hold that the word "particulars" include fresh instances of a similar kind". In this view we felt unable to allow the amendment sought for to paragraph 7 of the Election Petition. In paragraph 8 of the Election Petition the petitioner impeached the election on account of corrupt practices, and in paragraph 12(c) he impeached the 1st Respondent's return of Election Expenses on the ground that he had omitted to include certain amounts intending to suppress his corrupt practices. By amendments 6 and 7 the petitioner wants to extend the grounds of impeachment in these paragraphs to illegal practices also. With this object he wants to add the words "and illegal" between the words "corrupt" and "practices" in paragraphs 8 and 12(c). This is also an amendment of the Election Petition and not of the particulars, and cannot therefore be allowed. These three amendments are not clerical or inadvertent mistakes as the petitioner says in his affidavit.

3. By amendments 2 to 4 in the Amendment Petition the petitioner wants paragraphs 3(r), (s) and (t) to be re-numbered as paragraphs 4, 5 and 6. In the Election Petition paragraphs 4, 5 and 6 are missing, and paragraph 7 follows paragraph 3(t). It is therefore possible that the three paragraphs which ought to be numbered 4, 5 and 6 were wrongly numbered as 3(r), (s) and (t) in the Election Petition by a clerical mistake. No substantial prejudice will be caused to the Respondents by these amendments being allowed, nor will their disallowance cause any prejudice to the petitioner. But much confusion is likely to be caused if the paragraphs are re-numbered at this stage. In paragraph 3(r) of the Election Petition the petitioner impeached the declaration of the 1st Respondent's election on the ground that there was no verification as per Rules 49 and 59. By amendment 1 in the Amendment Petition the petitioner wants to substitute Rule 50 for

Rule 59. This is not a case of supplying further and better particulars but an attempt to include an altogether fresh particular or a new ground of objection to the election. The amendment is not therefore one that can be allowed under Section 83 (3).

4. By amendments 8 and 9 of the Amendment Petition the petitioner wants to substitute the word 'constitution' for the word 'construction' in list C and the words 'at Colachel' after the words 'brother's house' in Clause V of list D. Amendment 8 has been necessitated purely on account of a clerical mistake and is not objected to by the 1st Respondent. Amendment 9 is a case of furnishing further and better particulars. These two amendments alone have, therefore, been allowed.

5. The prayer in the Election Petition is for a declaration that the election of the 1st Respondent, the returned candidate, is void. The grounds on which the election of a returned candidate can be declared to be void, are thus given in Section 100(2) of the Representation of the People Act:—"Subject to the provisions of Sub-section (3), if the Tribunal is of opinion:—

(a) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice; or

(b) that any corrupt practice specified in Section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent; or

(c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form,

the Tribunal shall declare the election of the returned candidate to be void." According to the 1st Respondent, the allegations made in the election petition do not disclose the existence of the grounds mentioned in Sub-Clause (a) and (c) of Section 100(2) in this case, and the lists accompanying the petition in regard to the grounds under Section 100(2) (b) contain only vague and general charges which cannot be enquired into as they do not satisfy the requirements of Section 83(2). On account of this contention it is necessary to examine the allegations in the election petition and see whether those allegations, if proved, would constitute sufficient grounds for allowing the prayer claimed in the petition and whether they satisfy the requirements of Section 83(2) and can be enquired into.

6. Paragraph 2 of the Election Petition which says that "The procedure followed by the authorities concerned in the nomination and scrutiny proceedings, in polling, in counting, and declaration of results, disposal of ballot papers and other documents, ballot boxes were illegal and opposed to provisions of law", is only a preliminary and general statement. The charges therein are vague, indefinite and general. No particulars are given in that paragraph, and the petition appears to have been drawn up with the intention that paragraph 2 should contain a general and all comprehensive statement and that the particulars should be furnished in subsequent paragraphs and lists. No issues is therefore called for in regard to paragraph 2.

7. In paragraph 3 the petitioner states that he has reasonable grounds to believe that there was fraud in the Election, that there was tampering of ballot boxes, and that there was fraud in counting. Clauses (a) to (t) of paragraph 3 purport to contain particulars of this fraud and the tampering of the ballot boxes. The 1st Respondent contends that fraud is not one of the grounds mentioned in Section 100(2) and that his election cannot therefore be declared void even if there is fraud as alleged in the petition. The petitioner's learned Advocate urges on the other hand that Section 100 is not exhaustive and that fraud by itself would vitiate the Election without reference to Section 100(2). In support of this contention he relies upon certain English decisions in regard to fraudulent devices referred to in ROGERS on ELECTIONS Vol. II page 339. But English decisions are not of any help in this case, for as pointed out in "LYALLUPUR AND JHANG GENERAL CONSTITUENCY CASE No. 2" reported in DOABIA'S "INDIAN ELECTION CASES" Vol. II page 243, the English Act specifically provides for fraudulent devices. Election Tribunals in India constituted under the Representation of the People Act can exercise only the powers conferred on them by that Statute, and no provision of law has been brought to our notice conferring on them larger powers. Nor has any provision of law other than Section 100 of the Representation of the People Act been brought to our notice regarding the grounds on which an election can be set aside. We therefore consider that Section 100 must be exhaustive; and since such an important thing as fraud could not have escaped the notice of the Legislature when it provided for the grounds on which an election could be set aside, it appears to us that it is because all acts of fraud in connection with an election would fall within one or other of the Sub-clauses in Section 100(1) which lays down the grounds on which an election can be declared to be wholly void, and would also fall within one or other of the Sub-clauses of Section 100(2) which lays down the grounds on which the election of the returned candidate can be held to be void, that fraud has not been separately provided

for in Section 100. On a similar contention advanced in the LYALLUPUR AND JHANG GENERAL CONSTITUENCY CASE No. 2" referred to above, the Commissioners who heard that case observed:—"The next contention is that as fraud is not a corrupt practice within the meaning of Government of India (Provincial Legislative Assemblies) Order, 1936, paragraph 4-B of the petition should be struck off. This contention is, in our opinion, quite untenable as fraud may in some cases come within the ambit of the corrupt practice of undue influence. It is, no doubt, true that 'fraud' is not specifically mentioned as one of the corrupt practices in Schedule I to the Government of India Order, 1936, but we are clearly of the opinion that the fraud which has been alleged in the present petition, does fall within the purview of the corrupt practice of "Undue Influence" as defined in Schedule I. Electoral Right has been defined in Part III of the said Order, as the right of a person to stand or not to stand as, or to withdraw, from being, a candidate, or to vote or refrain from voting at an election. "Undue Influence" is described as any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of an electoral right. It is obvions that the definition of undue influence is very widely worded and covers all kinds of fraudulent acts of commissions which in any way directly or indirectly interfere with the exercise of any electoral right. The definition in the English Act specifically makes a fraudulent device or contrivance a type of undue influence. As devices based on fraud which interfere with the exercise of electoral right, are not mentioned by name in the definition given in Schedule I, it has been intentionally framed in very general terms so as to cover all kinds of such devices (*Vide*: AGRA CITY CASE N. M. U. 1925, HAMMOND'S ELECTION CASES, page 9). In the present case, the petitioner clearly alleges in paragraph 4(b) of his petition and the lists attached thereto that the Respondent "played a fraud" upon him and the Returning Officer and thus induced him to withdraw his candidature. There cannot therefore be the least doubt that the corrupt practice alleged by the petitioner in paragraph 4(b) of the petition, does fall under the category of "undue influence" as understood in the Election Law. We hold, therefore, that so far as the particulars in List B relate to the exercise of undue influence in the form of coercion or intimidation on the petitioner to obtain the letter of withdrawal from him, they shall be deemed to have been struck off and no issue will be framed about the alleged exercise of coercion or intimidation in obtaining the letter of withdrawal". There can therefore be no doubt that the election of a returned candidate can be declared void on the ground of fraud, but to set aside the election on that ground the act impeached as fraudulent must not only fall within one or other of Sub-clauses of Section 100 (2)

but also satisfy the other requirements of the particular Sub-clause under which it falls. For example, if the fraudulant act or device is undue influence, it would be corrupt practice specified in Section 123 and would fall under Section 100(2) (b). But in that case there must be a further allegation that it was committed by the returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent. Similarly in a case of fraud falling under Section 100(2) (a) there must be a further allegation that the election of the returned candidate has been procured or induced or the result of the election has been materially affected by the corrupt or illegal practice which constitutes the act of fraud. In a case of fraud falling under Section 100(2) (c) there must be a further allegation that the result of the election has been materially affected by the act impeached as fraudulent. It is only allegations satisfying these requirements that need be enquired into, for no useful purpose will be served by enquiring into allegations which, even when proved to be true, would be insufficient for setting aside the election. There is no averment in pargraph 3 that the election of the returned candidate was procured or induced by the fraud or the tampering of the ballot boxes mentioned therein or that those acts were committed by the returned candidate or his agent or by any other person with his connivance or that of his agent or that the result of the election has been materially affected by those acts. Paragraph 3 contains only general allegations, and the particulars are mentioned in Clauses (a) to (t). The instances mentioned in Clauses (a) to (t) are mainly non-compliance by the Returning Officer with the rules and orders made under the Representation of the People Act in regard to the transportation of the ballot boxes, the sorting and counting of the ballot papers, the verification of the identity of the boxes, and the appointment of the Polling Agents. It is nowhere stated in the petition that the Returning Officer omitted to comply with the rules and orders with the fraudulent intention of helping the 1st Respondent and making it appear that he had got more votes than he had really obtained. These allegations, therefore, amount only to more non-compliance of the rules and orders under the Act and the election of the 1st Respondent cannot be set aside even if they are found to be true without a further allegation that the result of the election has been materially affected by the non-compliance of the rules and orders. There is no allegation and no case in the petition that the result of the election has been materially affected thereby. It was urged at the time of hearing that the acts complained of in Clauses (a) to (t) can also be viewed as undue influence practised by the Returning Officer. Undoubtedly they can be so viewed. Undue influence practised by a candidate or his agent or by any other person with the connivance of the candidate or his agent is a corrupt practice falling under Section 123, and if it is practised by a person who is not a candidate or his agent or a person acting with the connivance of the candidate or his agent,

it will be a minor corrupt practice falling under Section 124(1). In view of the clauses (a) and (b) of Section 100(2) the election of the returned candidate can be declared void on account of corrupt practices only if it has been procured or induced, or the result of the election has been materially affected, by the corrupt practices complained of, or a corrupt practice specified in Section 123 has been committed by the returned candidate or his agent or by the Returning Officer with the connivance of the returned candidate or his agent. There is no allegation in the petition that the acts complained of in clause (a) to (t) were committed by the 1st Respondent or his agent or with the connivance of either of them or that the 1st Respondent's election has been procured or induced by those acts. Nor is there any allegation that the result of the election has been materially affected by these acts. From the allegations in clauses (i), (j) and (l), it would appear that the 1st Respondent has been credited with some more votes than what he has really obtained. According to the official returns, the 1st Respondent secured 1,15,893 votes and the petitioner 43,778 votes, Respondents 2 and 3 secured 32,075 votes and 36,158 votes respectively. According to clause (i) some Assembly Ballot Papers were wrongly included in the counting and were counted for the 1st Respondent. Only one instance of 200 papers is mentioned in clause(i). Instances of counting twice the ballot papers in a few boxes are given in Clauses (j) and (l). Even in these clauses there is no allegation that the wrong counting was due to the 1st Respondent or his agent or was done with the connivance of either of them or that the result of the election has been materially affected, or the 1st Respondent's election has been procured or induced by the wrong counting. In these circumstances, even if all the allegations made in paragraph 3 (a) to (t) turn out to be true, it will not be possible to declare the 1st Respondent's election void. There is no case in the petition that the further conditions for declaring his election to be void, exist. We therefore considered it unnecessary to frame any issue on the allegations contained in paragraph 3 (a) to (t) and struck out the whole of that paragraph including clauses (a) to (t).

8. In Paragraph 8 of the Election Petition the election is impeached by reasons of the corrupt practices committed by the 1st Respondent and set forth in List A. The list purports to give 5 instances of publications made by the 1st Respondent and others with his connivance containing false statements regarding the personal conduct and character of the petitioner and prejudicially affecting his election prospects. Two objections are urged by the 1st Respondent to this list. One is that the particulars given in it do not satisfy the requirements of Section 83(2), and the other is that the publications were not in relation to the personal character or conduct of the petitioner or in relation to his candidature, but are mere expressions of opinions about his public conduct based on reliable information believed

to be true. The offending publications were not produced along with the Election Petition, but the petitioner produced them on 4-10-1952. One of the two petitions filed on that day was to receive these publications. Discussing the question whether the petitioner can be permitted to produce subsequently the printed publications which he had not produced with the Election Petition for furnishing the particulars of the corrupt practices, it was observed in the 'NORTH WEST PUNJAB SIKH CONSTITUENCY CASE, reported in DOABIA'S INDIAN ELECTION CASES Vol. II, page 55, at page 62:—"So far as we are concerned, it is our duty to try the petition and our powers to allow amendment or amplification of the petition are clearly laid down in Rule 9 of the Chapter cited above. We may direct that further particulars be added, in order to ensure a fair and effectual trial of the petition, and in the present case we consider that we shall be acting rightly in the exercise of the discretion vested in us, if we allow the petitioner to add to the List B|1, the very words complained of, where those words appeared in a registered newspaper, of which under the law a copy of each issue is sent to the local Government for record, provided that such portion is clearly specified in the list by stating the date and page of the newspaper in which it appears, the heading of the article, etc. By adding of such particulars in the cases mentioned above, an effectual trial of this part of the petition will be ensured, and there will be, in view of the impossibility of fabricating past issues of a registered newspaper, no danger of unfair advantage or disadvantage to either side. We, however, do not consider that permission can be given to the petitioner now to cite particulars of the contents of posters or pamphlets, for the reason that such documents can be easily fabricated after the petition, to be used as evidence in support of allegations made in the petition *vide* remarks of the Commissioners in the PUNJAB EAST (SIKH) 1935 CASE, published at page 551 of HAMMOND'S "INDIAN ELECTION CASES" 1936. Also, we consider that where the exact article or note or poem appearing in a newspaper is not specified in the List B|1, but a vague description of the portions alleged to contain false statements is given, there the petitions cannot be permitted to add particulars as it would be tantamount to granting them permission to fish out fresh instances of "false statements", which we have no authority to allow to be added to the petition or its supporting list". Paragraph 1 of List A refers to the publication of a hand-bill dated 3rd December 1951 entitled an appeal to the independent voters published by B. Pichakkannu Pillai. The very words complained of are not given in paragraph 1, and from the summary given therein it would appear that the statements in the pamphlet related to the public conduct of the petitioner. To judge the nature of the offending statement and whether it was reasonably calculated to prejudice the prospects of a candidate at the Election it is necessary to read the statement in its context. Disjointed

sentences picked out here and there and read apart from the context are sometimes likely to convey a meaning quite contrary to, or at least not the same as, the meaning they would convey when read in their proper context. The petitioner's Counsel contends that as he had produced the pamphlet on 4-10-1952 it is open to us to look into it and read the statement in the proper context, and that, if we think that the words in the pamphlet are *prima facie* offensive we should frame necessary issues as regards paragraph 1. But the pamphlet in question is not a registered newspaper, and there is no case that it was reproduced in any of the registered newspapers. Having regard to the danger pointed out in the NORTH WEST PUNJAB SIKH CONSTITUENCY CASE referred to above, and the nature of the particulars furnished in paragraph 1 of List A we do not consider it proper to receive the pamphlet, which was not produced along with the Election Petition itself, in *lieu* of the full particulars which the petitioner was bound to give in the list under Section 83(2). Since the offending statements are said to have been published in a pamphlet we hold that the petitioner cannot be allowed to amend that paragraph or cite fresh particulars in regard to it. Paragraph 3 and 5 of List A relate to the publication of two pamphlets entitled 'A Rare Opportunity to the Travancore Tamil Voters' and 'Fill up the Cart Symbol Boxes'. These pamphlets also were not produced along with the Election Petition. The names of the presses in which they were printed are given in paragraphs 3 and 5 but the place or places where they were published, *i. e.*, actually put into circulation, are nowhere stated in the petition. Excepting the vague statement that the publishers of the first pamphlet were the 1st Respondent's close associates from Azhagappapuram and other places, the names of the publishers of that pamphelt are not disclosed in the Election Petition or the list. So far as the 2nd pamphlet is concerned, it is admitted in paragraph 5 that it was the 3rd Respondent and not the 1st Respondent who got it printed and published. The very words complained of are not given in both these instances also, and from the summary of the pamphlets given in paragraphs 3 and 5 it would appear that the offending statements in both pamphlets relate only to the petitioner's public conduct and not to his personal conduct or character. For citing full particulars the petitioner has produced the copies of these pamphlets also on 4-10-1952. But for reasons already stated in connection with the pamphlet referred to in paragraph 1 of List A, we hold that it is not proper to receive these pamphlets also in *lieu* of full particulars to be furnished and that the petitioner cannot be allowed to amend paragraphs 3 and 5 or cite fresh particulars in regard to the offending publications. Paragraphs 2 of List A refers to the publication of another hand-bill entitled "THE POLITICAL CHICANERY OF Mr. M. SIVATHANU PILLAI" on the 10th December 1951. Full particulars of that statement also were not given in the list as required by

Section 83(2). But it was stated in paragraph 2 that this pamphlet was republished in the weekly newspaper "THINGAL" on the 17th December 1951. On 4-10-1952 the petitioner produced a copy of the "THINGAL" of 17-12-1951 for citing full particulars of the offending publication. In view of the fact that the pamphlet was republished in the newspaper, we hold that the petitioner can be allowed to produce the newspaper for citing the full particulars and that paragraph 2 of List A should be read along with that newspaper. But after reading paragraph 2 and also perusing the publication in the newspaper we are clearly of opinion that the statements in the pamphlet relate only to the petitioner's public conduct and not to his personal character or conduct. For the reasons stated above, no issues are called for in regard to paragraphs 1 to 3 and 5 of List A. These paragraphs are therefore struck out.

9. Paragraph 9 of the Election Petition questions the 1st Respondent's election on the ground of undue influence and intimidation practised by him and his agents and others with his connivance, and List B furnishes the particulars of the said corrupt practices. In paragraphs 1 and 2 of list B, certain instances of violence alleged to have been committed by the 1st Respondent's agents and others are mentioned. In all instances where full particulars have been given we have framed the necessary issues. In our opinion the allegations in paragraph 2 reading:—"The agents at the connivance of the 1st Respondent made it impossible for rival candidates or their agents to go about freely without fear of violence for purposes of canvassing particularly in and near the following places, as Karingal, Madathattuvila, Moolachil, Kotticode, Eathenvilay, Koduppakuzhi, Alanvilai, Kandanvilai, Palappallam, Kodukkavilay, Lekshmipuram, Kodiyoor, Kannanoor, Poovancode, Kolvel, Nattalam, Kadamancode, and Malicode where the agents freely intimidated the rival parties. At Kotticode and Moolachil there were frequent cases of intimidation followed by violence on the part of the agents of the 1st Respondent on 26th and 29th December 1951, respectively. At Thuckalay his partisans committed violence on persons and threw stones at dead of night on the day of the announcement of the result of the election on 9th January, 1952 at the residence of Mr. Neelakanta Pillai, Vakil, Thuckalay", and the allegations in paragraph 6 of List B are vague and indefinite and entirely lacking in particulars. In the case of LUDHIANA MUSLIM RURAL CONSTITUENCY (DOBIA'S INDIAN ELECTION CASES Vol. II page 257) it was held that the words like agents, supporters and persons working in his interest are vague and that their names should be supplied in the list of particulars. It was also held in that case that the dates of the offence should also be mentioned in the list and that their names should be supplied in the list of particulars, which are so vague and indefinite as not to merit an enquiry, should be struck off. The allegation in paragraph 7 that publication was made in pamphlets and in

a newspaper to the effect that the Bishop of Kottar had blessed the 1st Respondent's candidature and that a belief was thereby successfully induced in the Catholic Community that they should vote for him in accordance with the Bishop's blessing will not amount to undue influence or intimidation or corrupt practice falling under Section 123(5). We are fortified in this view by the observation made in the case of BELLARI MOHAMMEDAN RURAL CONSTITUENCY (DOBIA'S INDIAN ELECTION CASES Vol. I page 169) and the case of NORTH WEST GURGOAN MOHAMMEDAN CONSTITUENCY reported in DOBIA'S INDIAN ELECTION CASES Vol. II page 332. It was observed in the BELLARI CASE that if a Pir supports a candidate he is entitled to take full advantage of this fact, provided of course that nothing was said to make voters fear that the Pir would invoke spiritual penalties against them if they displease him. In paragraph 7 of List B it is not stated that the Bishop had threatened spiritual penalties against the persons who would uot vote for the 1st Respondent. In the NORTH WEST GURGOAN MOHAMMEDAN CONSTITUENCY CASE it was held that when spiritual influence is alleged to have been exercised, the nature or substance of the direction issued to the religious followers should be given in the particulars. No such particulars have been furnished in paragraph 7. In the circumstsnces, we hold that no issue are called for in regard to paragraphs 6 and 7 and the portion of paragraph 2 of List B extracted above. Those portions of the List B have therefore heen struck off.

10. In paragraph 10 of the Election Petition it is urged that the result of the election was materially affected on account of systematic appeals to vote on grounds of caste or religion and the particulars of that allegation are given in List C. The latter part of List C reads:—"Besides these, all the three Respondents who belong to the Nadar Caste appealed to their caste men systematically as against the petitioner not to vote in his favour on ground of caste, and as hetween themselves they imported religion and appealed to their community on ground of religion as the 3rd Respondent was a Hindu and 1 and 2 Respondents are Christians. They conducted this propaganda both in public meetings and by means of pamphlets widely circulated. The measure of the injury caused to the petitioner in the election may be realised from the fact that the Nadar Community formed the major portion of the Constituency. This was a general feature in the campaign of the Respondents ignoring the very foundation of the Constitution providing for a Secular State." This is only a vague and indefinite allegation. The places and times at which the appeals were made, have not been disclosed in the list, and fresh particulars cannot be allowed to be furnished at tbis stage. No issue is therefore framed on this part of List C and the same is struck off.

11. Paragraph 11 and List Drelate to the corrupt practices of bribery and treating. The instance given in paragrsph 1 of List D appears *prima facie* to be only a donation given in charity and not a bribe. No doubt, it can be viewed as a case of bribery if corrupt motive is alleged. In that case, the petitioner was bound to give in the list the particulars of the voters who were induced to vote for the 1st Respondent by the gift of Rs. 500 to Sundara Rsj. No sucb particulars are given in the list. . Similarly in the case of treating in paragraph 5 of List D the names of the prominent members of the coastal village who were treated, have not been specified, nor is the village to which they belong specified. The other allegations in paragraph 5 do not constitute the corrupt practice of bribery and also lack in necessary particulars. Paragraphs 1 and 5 of List D are therefore struck off, and no issues are framed in regard to the allegations therein. The petition asking us to call for further particulars from the petitioner is dismissed as regards the portions of the Election Petition we have struck off. In regard to those portions we consider that it is not an amplification of particulars that is needed, but furnishing of fresh particulars which cannot be allowed. Further and better particulars in regard to the allegations in the Election Petition on which issues have been framed will be called for after the examination of the petitioner, if found necessary.

(Sd.)	G. Kumara Pillai,	*Chairman.*
do.	A. H. Bijili,	*Member,*
do.	R. Narayana Pillai,	do.

Dated: 13th October 1952.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT CENTRAL PRESS, TRIVANDRUM.